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# Television Satellite License: Retransmission of Network and Local Signals

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# ABSTRACT

The satellite compulsory license of the Copyright Act (17 U.S.C. 119) authorizes retransmission of "superstation" and network television broadcast programming via satellite providers to satellite home "dish" owners for private home viewing, upon payment of statutory fees and compliance with other conditions. Copyright policy issues have arisen about the satellite license's restrictions on retransmission of network signals only to "unserved households," and about retransmission of local signals back to the community served by the local broadcast station. This report reviews the background of the satellite license, the policy issues concerning retransmission of network and local signals, and legislative proposals (including S. 1720, H.R. 3210, S, 2494, H.R. 2921, and H.R. 4449 in the 105th Congress) in response to those policy issues.

# Television Satellite License: Retransmission of Network and Local Signals

## Summary

The satellite license of the Copyright Act (17 U.S.C. 119) requires copyright owners of television broadcast programming to permit the retransmission of certain broadcast signals containing their copyrighted works via satellite providers, upon payment of a copyright fee of 27 cents per signal per subscribers each month and upon compliance with other statutory conditions. The satellite license is subject to a sunset on December 31, 1999, unless Congress acts to extend the Satellite Home Viewer Act which enacted the license.

In the case of network signals, the satellite license permits retransmission of the signal only to "unserved households," that fall into the so-called "white areas" of television service. These are United States television households which cannot receive a predicted Grade B intensity signal through standard over-the-air receiving equipment. Former cable households are permitted to receive a network signal via a satellite provider only if cable service was terminated more than 90 days before the satellite service began

Policy issues have arisen about the "unserved households" restriction, including the interpretation of a viewable "predicted Grade B" signal, and the justification for the 90 day delay imposed on former cable households. Several relevant bills were considered but not enacted by the 105th Congress (H.R. 3210, S. 1720, S. 2494, and one version of H.R. 2921) which would have eliminated the 90 day waiting period for former cable households. S. 2494 would also have required the Federal Communications Commission (FCC) to set more precise standards for determining a viewable "Grade B signal."

With respect to local signals, satellite providers until recently did not have the technological capability of redistributing multiple local broadcast signals back to the communities served by the local broadcast stations (referred to as "local-to-local" retransmission) .Recent technological developments appear to make local-to-local retransmissions feasible — at least to the larger broadcast communities. Legislation is probably required, however, to authorize retransmission of local signals under the satellite license.

In the several bills (S. 1720, H.R. 3210, S. 2494, and H.R. 4449) which would have amended the Copyright Act, the Communications Act of 1934, or both to permit retransmission of local-to-local signals under the satellite license (or a new statutory license). These bills generally conditioned local-to-local retransmission of signals by satellite providers on extension to satellite providers of communications law signal carriage rules now applied only to cable systems. These include the must carry, retransmission consent, network non-duplication, syndicated, and sports exclusivity rules or provisions.

This report reviews the background of the satellite license, the policy issues concerning retransmission of network and local signals, and legislative proposals in response to those policy issues.

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# Television Satellite License: Retransmission of Network and Local Signals

The satellite compulsory license, Section 119 of the Copyright Act, 17 U.S.C., requires rightsholders to permit the retransmission of certain broadcast signals by satellite providers (including direct broadcasting entities) upon payment of a copyright royalty of 27 cents per signal per subscriber each month[1] and upon compliance with other statutory conditions.

Legislation creating the satellite license was originally enacted for 6 years (effective January 1, 1989),[2] and was extended for another 5 years by the Satellite Home Viewer Act of 1994 ("1994 SHVA").[3] The Section 119 license expires on December 31, 1999, unless Congress acts to extend it.

In the case of network signals, the satellite license permits retransmission of the signal only to "unserved households," that is, households that fall into the so-called "white areas" of television service. These are United States television households which cannot receive a predicted Grade B intensity signal through standard over-the-air receiving equipment. A former cable household, moreover, is ineligible for satellite retransmission of network signals if the cable service was terminated less than 90 days before subscribing to the satellite service.

Policy issues have arisen about the statutory restrictions on retransmission of networks signals, including the interpretation of a viewable "predicted Grade B" signal and the justification for the 90 day delay imposed on former cable households before they can receive network signals from a satellite service provider.

Satellite television providers were until recently exclusively national distribution services. They did not have the technological capability of redistributing multiple local broadcast signals back to the communities served by the local broadcast stations. Recent technological developments appear to make local-to-local retransmission of broadcast signals feasible. Legislation is probably required, however, to authorize retransmission of local signals under the satellite license.

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[1] This rate was set in October 1997, effective January 1, 1998, pursuant to the statutory rate adjustment procedures. For a review and analysis of policy issues relating to the October 1997 fee increase, *see,* D. Schrader, *Satellite Television License of the Copyright Act (17 U.S.C. 119) and the 1997 Rate Adjustment,* CRS Report 98-140 A.

[2] The Satellite Home Viewer Act of 1988, Title II of P. L. 100-667, 102 Stat. 3949, Act of November 16, 1988 (hereafter: the "1988 SHVA").

[3] P. L. 103-369, 108 Stat. 3477, Act of October 18, 1994 (hereafter: the "1994 SHVA").

This report reviews the background of the satellite license, the policy issues concerning retransmission of network and local signals, and legislative proposals to respond to those policy issues.

## Background

The satellite license of the Copyright Act (17 U.S.C. 119) authorizes retransmission of "superstation" and network television broadcast programming by satellite providers to satellite home "dish" owners for private home viewing, upon payment of statutory fees and compliance with other conditions. The original law was subject to a sunset after 6 years. The existing law is subject to sunset at the end of this decade on December 31, 1999.

"Superstations" are independent broadcast stations, like WGN-Chicago, WOR-New York, and WTBS-Atlanta, not affiliated with any of the commercial networks. The over-the-air signals of these independent broadcast stations are retransmitted on an essentially nationwide basis, principally by multiple wired cable systems under the authority of a separate compulsory license in the Copyright Act, the Section 111 cable license.[4] Compliance with the satellite license enables satellite providers to retransmit "superstation" signals in their programming packages.

"Network stations" are broadcast stations affiliated with one of the commercial networks, as defined in the Copyright Act,[5] and stations affiliated with the Public Broadcasting System (PBS).

The satellite license is a statutory or compulsory license, which permits the public performance of copyrighted works contained in television broadcast programming without the consent of the owner(s) of the copyrights. A compulsory license is an exception to the usual principle that the rights granted to owners of copyright subject matter are exclusive. Permission to use copyrights that are subject to exclusivity are obtained through voluntary contractual agreements. Under a compulsory licensing regime, however, the Copyright Act prescribes the terms and conditions of the use of the copyrighted works. In essence, a governmental authority rather than the marketplace fixes the price and terms of the use.

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[4] 17 U.S.C. 111(c)-(f). For background information and analysis concerning the cable license, and more detailed background information concerning the satellite license, *see,* D. Schrader, *Television Satellite and Cable Retransmission of Broadcast Video Programming Under the Copyright Act's Compulsory Licenses,* CRS Report 98-320 A.

[5] When the 1988 SHVA was enacted, there were three commercial networks — ABC, CBS, and NBC. The 1994 SHVA expanded the definition of "network" to include new and smaller networks such as Fox, United Paramount, Warner Brothers, and possibly the new Pax Network. The same Act also clarified that PBS affiliated stations are "network stations."

## Retransmission of Network Signals

Satellite carriers[6] must meet special conditions for the retransmission of network station signals. Under the 1994 SHVA, network stations are those that are owned or operated by, or affiliated with, one of the television networks in the United States. "Networks" are defined as entities offering an interconnected program service on a regular basis for 15 hours or more per week to at least 25 affiliated television licensees in 10 or more states.[7] Existing networks therefore include at least ABC, CBS, NBC, Fox, and PBS. The United Paramount Network, Warner Brothers Network, and the new Pax Network, may also fall within the definition of network.

When the satellite license was originally legislated, the statutory mechanism for retransmission of network signals rested upon the policy assumption that satellite providers should not be permitted to retransmit network signals already receivable by a television household through standard over-the-air reception equipment. The commercial networks resisted any compulsory license for satellite retransmission on the ground that their signals already "blanketed" the country. In the end, the networks had to concede that, while virtually all U.S. television households had access to network signals, perhaps one to two percent of the households could not receive the network signals. These households fall in the so-called "white areas." With respect to retransmission of network signals, the satellite license was therefore made available only to "unserved households."

"Unserved households" are primarily located in remote, rural areas, where the terrain or the distance from the nearest transmitter (whether a primary transmitter or a translator station) make over-the-air reception of a viewable signal not feasible without special equipment.

To justify carriage of network signals, the satellite provider submits to each network, within 90 days after commencing retransmission, the names and addresses of its subscribers. The networks and their affiliates may then use this list to determine whether the subscriber resides in an "unserved household." A household is "unserved" by a particular network if (i) the household cannot receive the signal of a network station over-the-air at predicted Grade B intensity, as defined by the FCC,[8] or (ii) within 90 days before the date service began to that household, the household has not received the network signal through subscription to a cable service.

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[6] Satellite carriers are entities authorized by the Federal Communications Commission ("FCC") to use a satellite in the point-to-multipoint distribution of television signals. They are essentially common carriers, but have been exempted by the FCC from regulation as ordinary common carriers.

[7] This definition also includes any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming of a primary network station.

[8] The FCC prescribes the signal strength levels that will deliver a signal at "Grade B intensity" to the community served by the broadcast station. Section 73.683(a) of title 47 C.F.R. The major objectives of the signal strength regulations are to assure delivery of a viewable signal to most of the television households in the station's service area and to avoid "bleeding" of signals from adjacent broadcast channels.

A network or one of its affiliate broadcast stations may challenge satellite retransmission of its signal on the ground the household is already "served" by the network. Upon receiving an objection, the satellite provider may either conduct a signal measurement test to prove the household is unserved, terminate service to the household, or continue service and place itself at the risk that the network or its affiliate station will sue for copyright infringement.

In any civil action litigating the eligibility of the household to receive the network signal, the satellite provider bears the burden of proving that the retransmission of the network signal is for private home viewing to an "unserved household."[9] The losing party must pay the costs of any tests that are conducted to measure signal intensity.[10]

**Legislative Proposals.** Since the satellite providers and rightsholders (including the networks and their affiliates) have been unable to reach an agreement about testing to determine the "served" or "unserved" status of a household, these interests have pursued litigation or legislative proposals to resolve the policy issue.

H.R. 3192 in the 104th Congress would have responded to the failure of private sector interests to agree on signal intensity testing by giving the private sector interests 30 days after enactment to come to an agreement. Failing an agreement, the bill would have required binding arbitration to establish signal intensity testing standards and procedures.

Several bills in the 105th Congress ( H.R. 3210, S. 1720, S. 2494, and one version of H.R. 2921)[11] would have eliminated the 90 day waiting period before former cable households may receive a network signal from a satellite provider.

S. 2494, the Multichannel Video Competition Act, would have required that the FCC complete a rulemaking proceeding by February 28, 1999 to set standards for a

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[9] This burden of proof provision took effect January 1, 1997, with respect to actions affecting subscribers who received the satellite service before October 18, 1994 (the effective date of the 1994 SHVA) under a claim of "unserved household" status.

[10] The 1994 SHVA had enacted transitional provisions which established procedures for testing the viewability of network signals. These procedures, which were in effect only in 1995 and 1996, distinguished between signals that were within or without the station's predicted Grade B contour. The basic concept was that satellite providers had the burden of conducting tests within the predicted Grade B contour, subject to reimbursement by the challenger broadcast station if the test proved the household was "unserved." If the household apparently fell outside the predicted Grade B contour of the station, the challenger station had the burden of conducting the signal intensity test. However, few tests were conducted by any party because of the expense of the test and the inability of the parties to agree on testing procedures and the standard for determining a "viewable" television picture.

[11] The version of H.R. 2921 reported by the House Judiciary Committee on September 10, 1998 would have deleted the 90 day waiting period for former cable households. H.R. REP. 105-661 (Part II), 105th Cong., 2d Sess. (1998). The version of H.R. 2921 that passed the House of Representatives on October 7, 1998, however, would not have removed the 90 day waiting period for former cable households. In any case, the Senate did not act on H.R. 2921.

viewable signal. The FCC would have been required to set an "objective measure of a satisfactory signal obtainable by use of generally-available off-air reception devices" used by the average television viewer. Prior to February 28, 1999, satellite providers could have continued retransmission of distant network signals that were part of their subscriber services on July 10, 1998, even if the households were located within an area served by an affiliate of the same network.

None of these bills was enacted.

The Copyright Office of the Library of Congress submitted a report to Congress on August 1, 1997. The report reviewed copyright policy issues concerning the compulsory licenses of the Copyright Act and recommended legislative options for possible consideration by the Congress.[12] First, the Copyright Office expressed the opinion that "the concept of network program exclusivity protection is not appropriately located in the copyright law. If the section 119 license is extended, the Copyright Office recommends that Congress amend the Communications Act of 1934 to provide, or direct the FCC to adopt, network exclusivity (and, for that matter, syndicated exclusivity) protection for satellite retransmissions of broadcast signals."[13]

The Copyright Office also observed that "a technological solution would be the best solution in the unserved households debate. The problem can be eliminated entirely if technology and business practices advance to enable satellite carriers to retransmit local network affiliates to their subscribers. If the subscribers can purchase the signals of their local network affiliates, they have no need to import distant network signals, and there will be no 'unserved household.'"[14]

Pending further technological developments, if the Congress declines to transfer network program exclusivity from the copyright law to the communications law, the Copyright Office proposed a "'red zone/green zone' approach to the problem. The Office recommend[ed] that satellite carriers be permitted to retransmit a network signal to all subscribers located outside the local market of an affiliate station of that network (the 'green zone'). The satellite carriers would be prohibited from retransmitting the network signal to subscribers located within the local market area of an affiliate station of that network (the 'red zone')."[15]

Under the Copyright Office's "red zone/green zone" proposal, a policy problem would remain concerning network service to those households in the "red zone" that do not receive a viewable network signal (even though the household falls within the local service area of a network affiliate). Pending a technological solution (i.e., local

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[12] REPORT OF THE REGISTER OF COPYRIGHTS ON COPYRIGHT LICENSING REGIMES COVERING RETRANSMISSION OF BROADCAST SIGNALS, August 1, 1997.

[13] *Hearings before the Senate Judiciary Committee on the Copyright Office Report on Compulsory Licensing of Broadcast Signals,* 105th Cong., 1st Sess. 22(1997) (hereafter: the "1997 Senate Hearing on the Compulsory License Report")

[14] *Ibid.*

[15] *Ibid.*

retransmission of network signals by satellite or the development of over-the-air digital television as a widespread medium), the Copyright Office, as a transitional matter, recommended legislation allowing retransmisison of network signals to "red zone" households if the subscribers pay a surcharge fee under the satellite license. These royalties would have been distributed to network affiliates.[16]

At the 1997 Senate Hearing on the Copyright Office's compulsory license report, however, the broadcasters "strenuously oppose[d]...[the proposal] to create a per-subscriber surcharge that would permit satellite carriers to deliver distant network affiliate programming into a local affiliate's market to ineligible subscribers."[17] The broadcasters argued that "a surcharge system would rob local stations audiences and quickly undermine the economic base of local affiliates and our country's unique network affiliate distribution system...."[18]

**Litigation Over Network Signals.** Under the existing satellite license, the network or its affiliate can object to retransmission of the network signal to "served" households. Generally, once the status of the household is challenged, the satellite provider terminates the carriage of the network signal, unless the subscriber either gets a waiver from the broadcaster or pays for a signal intensity test that proves lack of service. In the unusual situation where service continues without a waiver or tests to prove lack of service, broadcasters have sued the satellite provider for copyright infringement.

Recently, in *ABC v. Prime Time 24,*[19] a federal district court in North Carolina held a satellite carrier liable for violation of the "unserved Household" restriction of the satellite license. The defendant exceeded the scope of the section 119 license by a pattern of willful or repeated retransmissions of network signals to ineligible subscribers. The court granted a permanent injunction, as requested by the plaintiff. The satellite carrier was enjoined from retransmitting the particular network signal within the broadcast station's predicted Grade B contour (which was a circular area with a radius of about 75 miles).

As a result of an agreement by the National Association of Broadcasters (NAB), the Satellite Broadcasting and Communications Association (SBCA), and the parties to the litigation, enforcement of the permanent injunction was delayed until after February 28, 1999. The agreement also includes procedures for notifying existing subscribers of possible termination of their network signals. The notification will provide information about options for receiving the network signals and about possible waivers of the "unserved" household restriction by the broadcast stations.[20]

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[16] 1997 Senate Hearing on the Compulsory License Report at 22-23.

[17] *Id.* at 31.(Statement of William F. Sullivan, Vice President of Cordillera Communications, representing individual broadcasters).

[18] *Ibid.*

[19] _ F. Supp. 2d _, 1998 WL 544297 (M.D.N.C. August 19, 1998).

[20] "Joint Press Statement of NAB and SBCA," (NAB Press Release, September 21, 1998; Washington, D.C.) (Available online at "www.nab.org/").

Broadcasters view the issue of violation of the "unserved household" restriction as "a very serious one for the future of local television."[21] They assert that this condition of the satellite license "was created to make sure that local affiliates can continue to generate the viewership that we need to provide local news, election, coverage, weather, sports, public affairs, and other programming that communities that we serve depend upon."[22]

At the 1997 Senate hearing on the Copyright Office's compulsory license report, the broadcasters alleged that the satellite providers' "record of compliance is abysmal. Literally hundreds of thousands of homes across the Nation have been provided distant network signals, in clear violation of both the spirit and the letter of the law." [23]

The Satellite Broadcasting and Communications Association (SBCA), which represents the satellite providers, agrees that the purpose of the "unserved households" restriction "was to preserve the marketing area and audience viewing base of the local broadcaster."[24] While the satellite providers thought the restriction was workable on paper, "administering the 'white areas' concept has proved to be a nightmare for broadcasters, satellite carriers, and most of all for the consumers for whom the rule was intended to benefit. Indeed, as we have learned the hard way, the approach has been flawed from the very start and since has resulted in extreme controversy and dispute on both sides."[25]

The SBCA placed its hopes on voluntary negotiations between the satellite providers and the broadcasters to reach an agreement on a "mutually acceptable working arrangement regarding selection of 'white area' eligible consumer households. The plan under consideration entails the creation of 'red light/green light' zones determined by topographical maps and broadcast transmission plots within each DMA [designated market area]. The zones would demarcate areas of subscriber eligibility on a 'bright line' basis."

No final agreement on the demarcation of eligible households has been reached to date, however. Therefore, a policy issue remains concerning network service to "unserved households." Failing a negotiated agreement, litigation will continue, and both sides in the controversy will likely press for a legislative solution as part of any re-authorization of the satellite license.

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[21] 1997 Senate Hearing on the Compulsory License Report at 29.

[22] *Id.* at 29-30.

[23] *Id.* at 30.

[24] 1997 Senate Hearing on the Compulsory License Report at 39 (Statement of Charles C. Hewitt, President of the SBCA).

[25] *Ibid.* Broadcasters have filed several lawsuits against Prime Time 24 other than the North Carolina case, including cases in Miami, Florida and Amarillo, Texas. *Ibid.*

## Retransmission of Local Signals

**Background.** Direct-to-home satellite television distribution until recently has been a national distribution service. Technological developments now permit targeted distribution of some local signals back to the local market of the broadcast station. Not all satellite providers possess the technical capability for local-to-local retransmissions, and those that have some capacity for these retransmissions may not, for technical or economic reasons, be able to retransmit all local signals.[26]

Legislation is apparently required to authorize local-to-local retransmission of signals under the satellite license, if that is the preferred policy outcome. At the 1997 Senate hearings on the compulsory license report, the representative of the satellite providers stated that to "make 'local into local' a reality, however, will require some change in the SHVA [Satellite Home Viewer Act] in order to authorize the distribution of local signals under the satellite license, as well as establish a copyright rate of zero cents similar to cable."[27]

Implementation of local-to-local retransmission raises regulatory policy issues about parity between satellite providers and cable system operators. Broadcasting interests would apparently support the principle of local signal retransmission by satellite providers but only if the satellite providers are subjected to essentially the same regulatory regime under the communications law as cable. William Sullivan, representing broadcasters at the 1997 Senate hearing stated: "...I think the broadcasters, given appropriate protections, such as must carry, syndicated exclusivity, and network nonduplication rules, would probably support [satellite delivery of local stations into their local markets]...."[28]

The Association of Local Television Stations, which generally represents broadcast stations not affiliated with a network, similarly wrote that "the [satellite] compulsory license should permit retransmission of the signals of local television stations within their local market areas, *provided* mechanisms are in place to assure that the compulsory license is not used for discriminatory or selective carriage of local signals.... ALTV submits that the satellite carrier compulsory license should be amended to permit satellite carriers to retransmit signals of local stations in their home markets, but only if satellite carriers are first subject to 'must carry' rules akin to the current cable 'must carry' rules."[29]

The wired cable industry expressed a position similar to that of the broadcasters but raised the price for local retransmission by satellite providers even higher. Cable

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[26] At least one company, EchoStar Communications, has apparently begun local-to-local retransmission service in six markets, using its "spotbeam" technology. "*Local-to-Local Satellite TV Service Is Debated Before House Panel,* 55 BNA PATENT TRADEMARK, AND COPYRIGHT JOUR. 260 (February 5, 1998).

[27] 1997 Senate Hearing on the Compulsory License Report at 38 (Statement of Charles C. Hewitt, President of the SBCA).

[28] 1997 Senate Hearing on the Compulsory License Report at 31.

[29] *Id.* at 102-103 (emphasis in original).

interests asserted that the satellite industry should also be subject to additional requirements at the local level, such as the local program access rules and taxes, which apply to cable systems. "Whether the compulsory copyright license should be provided to entities other than cable — such as DBS operators that retransmit local broadcast stations within their local markets — cannot be fairly evaluated without reference to the responsibilities that attach to the cable license to retransmit such signals through communications policy decisions. These obligations include: mandatory carriage of *all* local broadcast signals, i.e., must carry; compliance with syndicated exclusivity rules and non-duplication of network programs; and sports blackout requirements. We also believe that considerations of parity dictate that some of cable's other obligations — such as program access rules, and local tax liability — should also apply to 'local' DBS."[30]

**Legislative Proposals in the 105th Congress.** Several bills were considered in the 105th Congress that addressed amendment of the satellite license to permit local-to-local retransmission of broadcast signals by satellite providers. Although the details of the bills differed, the common approach regarding the local signals issue was to amend the satellite license to permit retransmission of local signals on the condition that the cable signal carriage rules of the Federal Communications Commission (FCC) and/or communications law would generally apply to satellite providers. Under existing law, satellite providers are essentially unregulated by the FCC, except with respect to compliance with technical operating standards.

*Compulsory license reform bill.* H.R. 3210 and S. 1720, the "Copyright Compulsory License Improvements Act," proposed broad reforms of the Copyright Act's administrative mechanisms for rate adjustments and royalty distributions under the compulsory licenses.

With respect to the local signals issue, the bills would have amended the satellite license to allow retransmission of local television stations to subscribers within the station's local market. The "local market" of a station would have been defined as the station's "Designated Market Area" (DMA). The DMA would have been determined by a private media research company, the Nielsen Media Research Company.

Satellite provider retransmission of local signals would have been conditioned upon either obtaining retransmission consent[31] from the broadcast station, or at the

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[30] *Id.* at 50 (Statement of Decker Anstrom, President of the National Cable Television Association) (emphasis in original).

[31] "Retransmission consent" is a communications law requirement that a rebroadcaster or other redistributor of a primary broadcast signal obtain the permission of the original broadcaster as a condition of retransmitting the signal. Section 325 of the Communications Act of 1934. The requirement originally applied to other broadcast entities (such as translator stations). In the mid-1960s, the FCC first attempted to impose retransmission consent on cable systems as a condition of cable retransmission of broadcast signals through experimental regulations that were never adopted in final form. Notice of Proposed Rulemaking and Notice of Inquiry in Docket 18397, 15 FCC 2d 417 (1968). At that time, the retransmission consent mechanism proved unworkable because broadcasters, with few exceptions, refused their

(continued...)

option of the station, upon compliance with must carry rules.[32] The retransmission consent requirement would not have applied, however, to superstations in existence on January 1, 1998 or to noncommercial broadcast stations.

The FCC would have been directed to commence rulemaking proceedings within 45 days of enactment generally to apply its rules concerning retransmission consent, must carry, network nonduplication,[33] syndicated exclusivity,[34] and sports blackout protection[35] to satellite retransmission for private home viewing. Amendment of the

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[31](...continued)
consent for cable retransmissions. Second Further Notice of Proposed Rulemaking in Docket No. 18397-A, 24 FCC 2d 580 (1970). More than 20 years later, Congress amended the Communications Act of 1934 to impose statutory retransmission consent requirements on cable systems, at the option of the broadcaster. 1992 Cable Act, P.L. 102-385, 106 Stat. 1460.

[32] "Must carry rules" are communications law obligations imposed on cable systems for mandatory carriage of "local" broadcast signals. The FCC adopted must carry regulations in 1972 as part of its effort to preserve local broadcasting from the perceived threat of selective, "discriminatory" carriage of only the most popular broadcast signals by cable systems. Cable Television Report and Order (issued February 2, 1972), 36 FCC 2d 143 (1972). The FCC's must carry rules in effect on April 15, 1976 were incorporated by reference into the 1976 Copyright Act in the section 111(f) definition of what are essentially "local signals." Under these rules, a broadcast station licensed to operate in a particular community served by a cable system could insist upon carriage by that system within a 35-mile radius from the station's transmitter site, or on the ground the signal was "significantly viewed" in the community. The original must carry rules were held unconstitutional in *Quincy Cable TV, Inc. v. FCC,* 768 F. 2d 1434 (D.C. Cir. 1985) for communications law purposes but the court observed that the rules remained viable for purposes of the Copyright Act's cable compulsory license. Congress then adopted new statutory must carry provisions in the Cable Act of 1992. The statutory must carry provisions were held constitutional in *Turner Broadcasting System, Inc. v. FCC,* 117 S. Ct. 1174 (1997). The statutory must carry provisions basically give commercial broadcasters a choice between insisting upon mandatory carriage by cable or exercising a right to grant or deny retransmission consent.

[33] The FCC's network nonduplication rules prohibit cable importation of the network programming into a service area already served by that network. For example, if an NBC affiliate station operates in the television market served by the cable system, the cable system may not duplicate the network programming by importing another NBC station into that television market. The signal can be imported to retransmit the nonnetwork portion of the broadcast day (e.g., the local news, other station originated programming, and syndicated programming).

[34] The FCC's syndicated exclusivity rules allow a broadcast station to object to cable carriage of specific nonnetwork programming for which the broadcast station has purchased exclusive transmission rights within its television market. Most of this programming has been "syndicated," that is, marketed by independent producers to one broadcast station in each television market under an exclusive license.

[35] The "sports blackout" rules are a form of exclusivity protection for sports programming. They require cable systems to "blackout" certain sporting events from a broadcast retransmission, if the broadcast station has purchased exclusive rights in the transmission of the sporting event.

satellite license to permit satellite retransmission of local signals would have generally been delayed until the FCC's regulatory changes had been adopted.

Neither H.R. 3210 nor S. 1720 was enacted.

*Satellite Access to Local Stations Act.* H.R. 4449, the "Satellite Access to Local Stations Act," would have amended both the Copyright Act and the Communications Act to facilitate local-to-local retransmission of broadcast signals by satellite providers. In general, the bill would have subjected the satellite providers either to the must carry or retransmission consent requirements of the communications law.

The Copyright Act would have been amended by adding a new compulsory license for retransmission of local signals in a new Section 122 of title 17, U.S. Code. Local-to-local retransmissions by satellite providers would have been authorized: 1) if retransmission was permitted under the rules of the FCC and 2) the satellite provider made a direct or indirect charge to each subscriber, or a distributor contracted with the satellite provider to make retransmissions to the public. No royalty fee would have been payable for local signals under the proposed Section 122 license.

In its detailed must carry provisions, H.R. 4449 would have required each satellite provider serving subscribers in a local market to carry all local stations, subject to the retransmission consent option by the broadcaster. All local signals had to be carried on contiguous channels. Compensation to the broadcast station for local signal carriage or for channel position would have been prohibited, except that the satellite provider could have recovered the costs of delivering a good quality signal to its principal headend.

H.R. 4449 was not enacted.

*Multichannel Video Competition Act.* S. 2494, the "Multichannel Video Competition Act," would have amended only the Communications Act of 1934 to mandate local-to-local retransmission of broadcast signals by satellite providers through must carry provisions. The bill would have established an interim regime for carriage of local signals and would have delayed full mandatory carriage until January 1, 2002 or until the FCC adjusted its must carry rules. During the interim regime, the satellite providers would have had to compensate a broadcast station for non-carriage of local signals, under a compensation formula to be adopted by the FCC.

The satellite providers would also have been subject to the retransmission consent requirements of the Communications Act, with exceptions for the signals of noncommercial broadcast stations, and certain grandfathered signals.

S. 2494 was not enacted.

## Status

The television satellite license of the Copyright Act, 17 U.S.C. 119, expires on December 31, 1999 unless Congress acts to extend the license. Congress will likely

be asked by one or more private sector interests to examine policy issues relating to satellite provider retransmission of network and local signals.

The existing satellite license permits retransmission of network signals only to "unserved households," i.e., television households that cannot receive a predicated Grade B intensity signal through standard over-the-air receiving equipment. Also, former cable households must wait 90 days before getting a network signal from a satellite provider. Since broadcasters and satellite providers have been unable to agree on standards and procedures for determining which households are "unserved" by a network, broadcasters have turned to copyright infringement suits to enforce their rights. Satellite providers seek a legislative solution, absent an agreement with broadcasters to resolve their disputes.

Some satellite providers seek amendment of the Copyright Act to permit local-to-local satellite retransmission of broadcast signals. Broadcasters may support this proposal but condition their support on additional legislation relating to communications law requirements now applied to cable systems. These provisions include retransmission consent, must carry rules, network nonduplication rules, and syndicated and sports exclusivity rules. Cable systems argue that, if satellite providers are allowed to retransmit local signals, they should be subject not only to the just-mentioned communications law requirements, but should also be subject to program access rules and taxation by local governmental authorities.